



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1996

Ms. Joan Kennerly
Assistant City Attorney II
Office of the City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR96-0177

Dear Ms. Kennerly:

You ask this office to reconsider our decision in Open Records Letter No. 95-1574 (1995). Your request for reconsideration was assigned ID# 38021.

In Open Records Letter No. 95-1574 (1995) this office concluded that the City of Irving (the "city") had neither raised section 552.103(a) of the Government Code as an exception to required public disclosure nor established that litigation was reasonably anticipated and, therefore, could not withhold certain notes as attorney work product. The city requested reconsideration of that ruling on January 2, 1996, asserting that a lawsuit had been filed against the city on October 13, 1994. The city was notified of the lawsuit on October 14, 1994. However, the city did not inform this office of the lawsuit until January 2, 1996.

When seeking a ruling from this office, the governmental body has the burden to prove that an exception applies to requested information. *See* Open Records Decision No. 542 (1990), Attorney General Opinion H-436 (1974); *see also* Gov't Code § 552.301(b) (requiring governmental body that wishes to withhold information to submit reasons for doing so). In light of the temporal nature of section 552.103(a) and the governmental body's duty to establish the applicability of the exceptions it claims, we believe the act requires a governmental body raising section 552.103(a) to provide this office with information about new and significant developments concerning the anticipated litigation. Furthermore, we believe that a governmental body must provide to this office new information regarding the litigation in a timely manner.

Although you have provided new information that a lawsuit has been filed regarding this matter, you notified this office of that fact more than fourteen months after the city received notice of the lawsuit. Because the city failed to timely notify this office of the changed circumstances, we decline to reconsider the conclusion reached in Open Records Letter No. 94-1574 (1995). The city must promptly release the records as indicated in that letter.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref.: ID# 38021

Enclosures: Submitted documents

cc: Mr. Robert H. Osburn
Blassingame & Osburn
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8117 Preston Road
Dallas, Texas 75225
(w/o enclosures)